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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 174

LAURA DICKINSON,

Appellant,

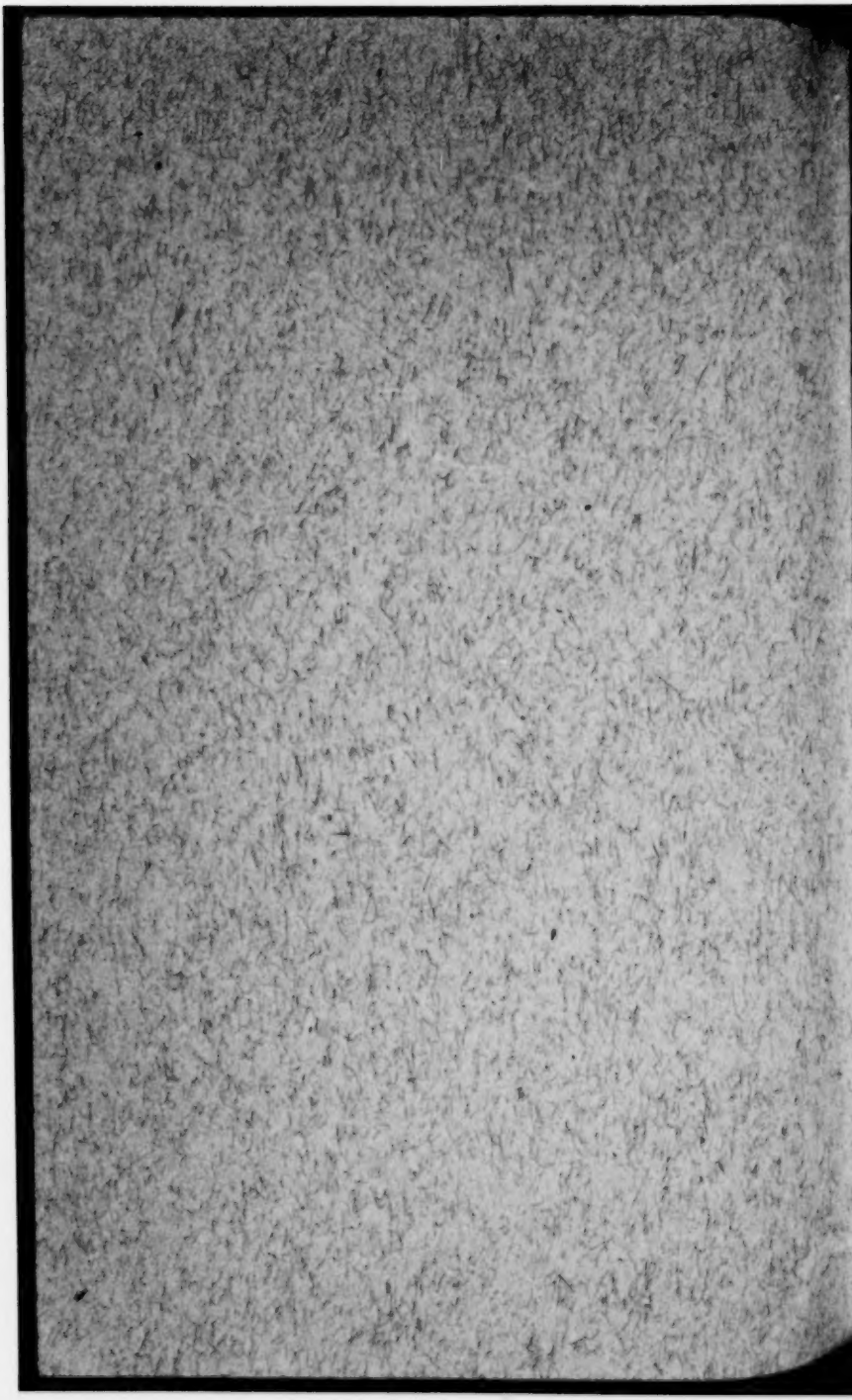
vs.

C. FRED PORTER, State Comptroller, of the State of Iowa, and J. M. GRIMES, Treasurer of State, of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa.

APPEAL FROM THE SUPREME COURT OF THE STATE OF IOWA.

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

MARTIN M. COONEY,
ROBERT W. CLEWELL,
WILLIAM C. FUERSTE,
Counsel for Appellant.



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C. FRED PORTER, State Comptroller, of the State of Iowa, and J. M. GRIMES, Treasurer of State, of the State of Iowa, ALLAN T. DAYKIN, County Auditor of Dubuque County, Iowa, and LEO J. MEUSER, County Treasurer of Dubuque County, Iowa.

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

Appellees' statement as to jurisdiction and motion to dismiss or affirm is limited exclusively to the following grounds, to-wit:

1. That the appeal is taken for the purpose of delay only.

2. That the federal questions involved are not substantial in character.

I.

THE APPEAL IS TAKEN IN GOOD FAITH AND NOT FOR THE PURPOSE OF DELAY.

A reading of the record will disclose that the appeal is taken in good faith and not for the purpose of delay.

II.

THE FEDERAL QUESTIONS INVOLVED HEREIN ARE SUBSTANTIAL IN CHARACTER.

Statute of the State of Iowa, the validity of which is involved.

The statute of the State of Iowa, the validity of which is involved herein is Chapter 426 of the 1946 Code of Iowa as amended, pages 1228 and 1229, the pertinent provisions of which are as follows:

"426.1 *Agricultural land credit fund.* There is hereby created as a permanent fund in the office of the Treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining said fund for each fiscal year beginning July 1, 1946, there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of five million dollars. Any balance in said fund on June 30 shall revert to the general fund.

426.2 *Definition.* 'Agricultural lands' as used in this chapter shall mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes. Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands

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of more than ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter.

426.3 *Where credit given.* The agricultural land credit fund shall be apportioned each year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the millage for the general school fund exceeds fifteen mills; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund fifteen mills, except in the case of a deficiency in the agricultural land credits fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided. The agricultural land credit as provided herein shall not be made to any taxpayer on any portion of his property upon which a homestead credit, as provided by Chapter 425, has been allowed for the year in which the agricultural credit is claimed.

426.6 *Computation by auditor.* On or before August 1 the county auditor shall list by school districts all tracts of agricultural lands which are entitled to credit hereunder together with the taxable value, and immediately upon receiving the certification of the budget from each school district shall determine the tax rate for the general fund of the district in the manner provided in Section 444.3, if the tax rate is in excess of fifteen mills he shall multiply the millage which is in excess of fifteen mills by the total taxable value of the agricultural lands entitled to credit hereunder in the district and on or before November 10 certify the amount thereof to the state comptroller. In the event the county auditor denies a credit upon any

such lands, he shall immediately mail to the owner at his last known address notice of his decision thereon. * * *.

426.7 *Warrants drawn by comptroller.* After receiving from the several county auditors of the state the certifications provided for in Section 426.6, and on or before December 10, the state comptroller shall draw warrants on the agricultural land credits fund created by this chapter, payable to the county treasurers of the several counties of the state in the total amount certified by the county auditors of the respective counties and mail said warrants to the county auditors of said counties, provided that in the event the agricultural land credits fund is insufficient to pay in full the total of the amounts certified to the state comptroller on the tenth of November, he shall prorate the fund to the several county treasurers and notify the several county auditors of the prorata percentage at the time of mailing the warrants to them.

426.8 *Apportionment by auditor.* Upon receiving the warrant from the state comptroller the county auditor shall determine the amount thereof to be credited to each tract of agricultural land, and shall enter upon the tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit, the amount of said credit, and shall deliver the comptroller's warrant to the county treasurer with the tax lists. The county treasurer shall credit each school district with the total amount of the tax credits credited on lands in the district and shall show on each tax receipt the amount of tax credit for each tract of agricultural lands.

426.9 *Pro rata disbursement.* If the appropriation herein is insufficient to pay the credits in full, then in that event they shall be paid on a pro rata basis."

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Nature of case and rulings below.

The statute in question sets aside five million dollars for each fiscal year to be used to pay all of the general school fund taxes in excess of fifteen mills on agricultural land as defined by the statute. The term "agricultural land" is defined in the statute to mean and include all tracts of land of ten acres or more, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres and tracts of less than ten acres belonging to and a part of other lands of more than ten acres, lying within any school corporation in the State of Iowa and in good faith used for agricultural or horticultural purposes.

Under the statute in question owners of "agricultural land" as defined by the statute, are required to pay only a general school fund tax of fifteen mills on said property regardless of the amount of said tax actually levied in the school district in which the real estate is located. Owners of real estate not meeting the requirements of the statute regardless of its type and the use to which it is put, are required to pay the general school fund tax levied thereon to the full extent of the millage rate.

Appellant, the owner of agricultural land of less than ten acres in size in Epworth School District, Dubuque County, Iowa, brought action in the District Court of Iowa in and for Dubuque County, challenging the constitutionality of said statute, Chapter 426 of the 1946 Code of Iowa, and asking the Court to enter a declaratory judgment decreeing said statute unconstitutional.

The specific features of the statute, the constitutionality of which appellant attacked were (1) the private purpose of the statute and the appropriation provided therein, (2) the arbitrary legislative classification, and (3) the amount, manner and method by which the exemption or tax credit

and the allocation of said funds to the school district is determined under the statute.

Defendants-appellees, asserted the statute was constitutional.

The District Court declared the statute constitutional on January 6, 1947. A copy of the Court's decision is appended to the appellant's Jurisdictional Statement marked Appendix "A". Thereafter appeal was taken to the Supreme Court of the State of Iowa which court on February 10, 1948, in a five to three decision, with one Justice not sitting, entered a judgment and decree reversing the District Court and holding the statute unconstitutional in that (1) the purpose of the statute was private and not public, and (2) the area classification of agricultural land to receive the benefits of the statute, and other land to be excluded was purely arbitrary and unreasonable. A copy of said judgment and decree being appended to appellant's Jurisdictional Statement marked Appendix "B" and reported in 31 N. W. (2d) 110. Thereafter on December 14, 1948, more than ten months thereafter, the Supreme Court of the State of Iowa, withdrew its previous judgment and decree and entered in its stead a judgment and decree holding that said statute was constitutional and that it was not violative of the Iowa Constitution or the Fourteenth Amendment to the Constitution of the United States. A copy of said judgment and decree is appended to appellant's Jurisdictional Statement marked Appendix "C" and the decision is reported in 35 N. W. (2d) 66. Thereafter on March 11, 1949 a rehearing was denied appellant and the judgment and decree became final on that date.

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Points relied upon for reversal.

The Iowa Supreme Court erred in:

A. Holding and deciding that said state statute which classifies agricultural lands separately from other types of taxable real estate for purposes of school tax, school tax exemption and state appropriations in payment of school taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

B. Holding and deciding that said state statute which classifies agricultural lands solely on the basis of their having been laid off or platted into tracts of ten acres or more, for the purposes of school tax, school tax exemption, and state appropriations in payment of school taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

C. Holding and deciding that said state statute which classifies agricultural lands on the basis of their being located in a school district in which the millage for the general school fund exceeds fifteen mills, for the purposes of school tax, school tax exemption and state appropriations in payment of taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers

in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

D. Holding and deciding that said state statute which benefits only citizens and taxpayers owning real estate, (1) used for agricultural or horticultural purposes, and (2) laid off or platted into tracts of ten acres or more, and (3) located in a school taxing district in which the millage rate is in excess of fifteen mills, operates equally upon all citizens and taxpayers within the same class, and that said classification does not grant to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1, of the Fourteenth Amendment to the Constitution of the United States.

E. Holding and deciding that said state statute which appropriates public moneys, raised from statewide general sources of taxation, to the payment of taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute in certain school districts of the State, to the extent that the millage for the general school fund is in excess of fifteen mills, constitutes a proportioning of the tax to be borne by owners of land of the type and kind embraced by the statute, as distinguished from the tax to be borne by citizens and taxpayers owning other types of real estate, and in holding that said statute does not in this respect constitute an arbitrary, non-uniform and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

F. Holding and deciding that said state statute, which exempts certain citizens and taxpayers from paying taxes upon real estate of the type and kind embraced by said statute and owned by them, provides a proper basis of

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tax exemption on the ground that it is an encouragement and in aid of agriculture or to encourage the reorganization of school districts within the state, and therefore based upon a valid public purpose and public policy which would justify such a classification and non-uniform operation of said statute in granting to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States. On the contrary appellant's position is that said state statute does not aid agriculture in any manner, does no operate to encourage the reorganization of school districts within the state and does not serve any public purpose whatsoever.

G. Holding and deciding that the said state statute which appropriates public moneys raised from statewide general sources of taxation, to the payment, by a "credit" system, of taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute, to an extent arbitrarily determined to be the amount that the tax levied for the general school fund exceeds the amount of tax which would be levied on the respective tracts of land if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds and that it does not deprive certain citizens and taxpayers of property without due process of law, and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

H. Holding and deciding that said state statute which appropriates public moneys raised from statewide general sources of taxation, to the payment, by a "credit" system, of individual taxes of certain taxpayers and citizens own-

ing real estate of the type and kind embraced by the statute, without any limit to the amount of such benefit which an individual taxpayer may receive, and which credit is arbitrarily determined to be the amount that the tax levied for the general school fund on each tract of such lands owned by him exceeds the amount of tax which would be levied thereon if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds for a valid primary public purpose and that the classification employed therein does not deprive certain citizens and taxpayers of property without due process of law and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The federal questions here involved have never been decided by this court.

The statute whose validity is involved herein is a statute of state wide application and has to do only with general school taxes.

The federal questions involved herein are:

1. Is the purpose of the statute public?

2. Are the classifications provided by the statute reasonable and designed to carry out a public purpose?

The classifications are as follows:

a. Agricultural lands (as defined by the statute), separate and apart from other real estate.

b. Agricultural lands separate and apart from other agricultural lands whose use and location is the same simply because of the size of the tracts.

c. Agricultural lands separate and apart from other agricultural lands whose size and use is the same simply because of its location in a school district where the millage exceeds fifteen mills for general school tax purposes.

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3. The validity of the procedure provided under the statute to determine the amount of benefits to be received by each land owner coming under the statute.

The foregoing federal questions have never been decided by this Court.

Assuming without admitting that the federal questions relied upon herein have heretofore been decided by this court, a motion to dismiss or affirm will not be sustained where analysis and exposition are necessary in order to make clear the decisive effect of such prior decisions and there is conflict in the decisions of the various state courts of last resort upon the question, and a division of the Court below.

AUTHORITIES.

American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102.

Bayside Fish Flour Co. v. Gentry, 297 U. S. 422, 429, 56 S. Ct. 513, 80 L. Ed. 772, 777.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 558, 22 S. Ct. 431, 46 L. Ed. 679, 689.

Fiske v. Kansas, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108.

Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.

Lawrence v. State Tax Commission, 286 U. S. 276, 52 S. Ct. 556, 76 L. Ed. 1102.

Louisville & Nashville R. R. Co. v. Melton, 218 U. S. 36, 47, 54 L. Ed. 921, 926.

Simmons v. Ericson (S. D.) 223 N. W. 342.

ARGUMENT.

Assuming without admitting that the federal questions involved herein have heretofore been decided by this court, appellees' motion to dismiss or affirm should not be sus-

tained for the reason that an analysis and exposition of the statute, the record and the points relied upon by appellant for reversal, are required in order to make clear the effect of such prior decisions if any there are.

Our search discloses only two state decisions involving a statute in any way similar to the one in question, *Keefner v Porter*, 228 Ia. 844, 293 N. W. 501, which involved a similar Iowa statute classifying agricultural land located in independent school districts separate and apart from all other types of real estate for general school taxes. The Iowa Supreme Court held the statute invalid on the ground that the classification contained therein was arbitrary and unreasonable and was not calculated to further any proper public purpose and that the classification did not provide for a basis which would effectually single into a separate class persons or objects with which purpose of legislature is concerned and that there was no reasonable relationship between the purpose of the legislation and basis of classification set out in the statute.

The statute whose validity is now before this Court is the identical statute involved in the *Keefner* case except that the statute classifies agricultural land (as defined by the statute) located in a school district for general school tax purposes, separate and apart from all other real estate.

In *Simmons v. Ericson*, (S. D.) 223 N. W. 342, "agricultural land" for the purpose of the statute involved was defined as all land not platted in city or town lots, used exclusively for farm and agricultural purposes and provided that no agricultural land within an independent school district shall in any year be taxed to exceed ten mills on the dollar of the assessed valuation for school purposes, while other lands or real estate within the district could be taxed twenty-five mills on the dollar.

The plaintiff contended that the limitation of the levy on agricultural land to ten mills on the dollar, while other

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lands or real estate within the district may be taxed twenty-five mills on the dollar, was in violation of that provision of the Constitution, that taxes shall be uniform on all property of the same class.

The court held the classification arbitrary and unreasonable and the statute therefore invalid. At page 454 of the Northwestern citation the Court said:

> "We are unable to see any difference which furnishes a reasonable ground for making a distinction between the rate of taxation for school purposes upon agricultural lands and that upon other real estate within the same school district."

The Constitution of South Dakota was later amended permitting the classification of agricultural land for school purposes separate and apart from other real estate.

That there was a definite division in the Court below cannot be doubted. This is the second time that the statute has been before the Supreme Court of Iowa with some variations in its contents. The statute originally classified agricultural land located in independent school districts for general tax purposes, separate and apart from all other real estate including agricultural land that was not located in an independent school district. The Iowa Supreme Court in the case of *Keefner v. Porter*, Supra, held the statute invalid because of the arbitrary and unreasonable classification contained therein. The statute whose validity is attacked herein is identical with the statute in the *Keefner* case, except that the statute classifies agricultural land, as defined by the statute, located in any school district separate and apart from all other real estate, for general school tax purposes. In a five to three decision, one Justice not sitting, reported in 31 N. W. (2d) 110, held the statute invalid on the ground that the purpose of the statute was private and the classification contained therein was un-

reasonable and not designed to carry out any public purpose. Ten months later in a six to three decision the Iowa Supreme Court withdrew its former opinion and held the statute valid.

What may be regarded as a denial of due process and equal protection of the law is not always as easily determined, as the decisions of this court and the highest Courts of the states show. As said by this Court in the case of *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 558:

"No rule can be formulated that will cover every case." Each case must stand or fall on its own merits.

The points relied upon for reversal are set forth and argued in the following propositions in the order in which they appear in the Assignment of Errors.

PROPOSITION A.

The Iowa Supreme Court erred in holding that said statute which classifies agricultural land separate and apart from other lands for purposes of general school taxes, general school tax exemptions and state appropriations in payment of general school taxes on lands, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers, rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

1. The Legislature may classify but a classification may not be arbitrary or unreasonable and must be calculated to further some public purpose, and classification must provide for a basis which will effectually single into a separate class persons or objects with which purpose of Legislature is concerned and there must be a reasonable relationship between purpose of legislation and basis of classification set out in the statute.

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AUTHORITIES.

Appeal of York & Foster, (Pa.) 43 A. (2d) 557.
Bell v. Town of Pulaski, (Tenn.) 184 S. W. (2d) 384.
Cary v. City of Pekin, 88 Ill. 154.
Copeland v. City of St. Joseph (Mo.) 29 S. W. 281.
Corporation of Sevierville v. King, (Tenn.) 184 S. W. (2d) 381.
Essex County Park Commission v. Town of West Orange, (N. J.) 73 A. 512.
Gulf, C. & S. F. R. Co. v. Ellis, 165 U. S. 150, 165, 17 S. Ct. 255, 41 L. Ed. 666, 668, 672.
Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.
Monaghan v. Lewis (Del.) 59 A. 948.
Opinion of Justices, (Maine) 55 A. 827.
Power Mfg. Co. v. Saunders, 274 U. S. 490, 494, 47 S. Ct. 678, 71 L. Ed. 1165.
Simmons v. Ericson, (S. D.) 223 N. W. 342.
Smith v. City of Americus, (Ga.) 15 S. E. 752.
Truax v. Corrigan, 257 U. S. 312, 333, 42 S. Ct. 124, 66 L. Ed. 254, 263.

2. While the Legislature is free to make classifications in the application of a statute which are relevant to the legislative purpose *the ultimate test of the validity is not whether the classes differ, but whether the differences between them are pertinent to the subject in respect of which the classification is made.*

AUTHORITIES.

Asbury Hospital v. Cass Co., 326 U. S. 207, 214, 66 S. Ct. 61, 65, 90 L. Ed. 6, 13.
Metropolitan Casualty Insurance Co. v. Brownell, 294 U. S. 580, 583, 55 S. Ct. 538, 539, 79 L. Ed. 1070.
Power Mfg. Co. v. Saunders, 274 U. S. 490, 494, 47 S. Ct. 678, 71 L. Ed. 1165.

3. In considering the classification of a law, not only its final purpose must be regarded, but the means of its administration.

Adams v. Milwaukee, 228 U. S. 572, 582, 33 S. Ct. 610, 57 L. Ed. 971, 977.

St. John v. New York, 201 U. S. 633, 26 S. Ct. 554, 50 L. Ed. 896.

4. School taxes are for the benefit of all people. It is a tax for a public purpose.

51 Am. Jur., taxation, Section 9.

Chicago, M. & St. P. Ry. Co. v. Phillips, 111 Ia. 377, 82 N. W. 787, 61 C. J., taxation, Section 3.

1 Cooley, taxation, Fourth Edition, 213-215.

Kelly v. Pittsburgh, 104 U. S. 78, 26 L. Ed. 658, 659, 660.

Morton Salt Co. v. City of South Hutchinson, 159 Fed. (2d) 897.

Thomas v. Gay, 169 U. S. 264, 280, 18 S. Ct. 340, 42 L. Ed. 740, 746.

Wright v. House, 188 Ind. 247, 121 N. E. 433 at 435.

ARGUMENT.

Section 1 of the Fourteenth Amendment to the Constitution of the United States provides that:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

There are only two states where the Legislature has attempted to classify agricultural lands separate and apart from all other real estate *for general school tax purposes*, namely, the states of South Dakota and Iowa. The South

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Dakota Supreme Court held the classification arbitrary and unreasonable in the case of *Simmons v. Ericson*, 223 N. W. 342, on January 26, 1929 at a time when the state was in the midst of a depression caused by a prolonged drought. The statute defined "agricultural lands" as all lands not platted in city or town lots, used exclusively for farm and agricultural purposes and provided that no agricultural land within an independent school district shall in any year be taxed to exceed ten mills on the dollar of the assessed valuation for school purposes, while other lands or real estate within the district could be taxed twenty-five mills on the dollar. It was contended that the limitation of the levy on agricultural land to ten mills on the dollar, while other lands or real estate within the district may be taxed twenty-five mills on the dollar, is in violation of that provision of the Constitution, that taxes shall be uniform on all property of the same class.

At page 343 of the Northwestern citation the Court said:

> "We are unable to see any difference which furnishes reasonable ground for making a distinction between the rate of taxation for school purposes upon agricultural lands and that upon other real estate within the same school district. There is no more difficulty in discovering the property for assessment in the one case than in the other, or in ascertaining its value for the purpose of assessment in the one case than in the other. It is argued by appellant that the Court must take judicial notice that the relative number of families, and therefore of children, upon agricultural lands within the district is much smaller than that within the municipal area which is divided into blocks and lots. But the number of children that a taxpayer has bears no relation to the amount of tax he may be required to contribute for the support of the schools. Non-residents and persons who have no children may be called upon to contribute in a much larger degree for the support of the school in the community in which they own

property than residents who have large families, many of the children attending school and receiving instructions therein. In this school district the average farm of 160 acres, including all structures and improvements, is assessed at approximately $11,000.00. At the maximum rate of taxation authorized by Chapter 102, Laws of 1923, on agricultural lands, the school tax on such a farm would be $110.00. The owner of a store building and lot of the same valuation within the platted portion of the muncipality could be taxed, for school purposes in the same school district, $275.00. We think the placing of agricultural lands within the school district in a different class than that of other real estate is not based on differences in the character of the property which furnish a reasonable ground for making a distinction between the two classes, and that it really results in permitting agricultural land to escape a burden imposed on other real estate situated in substantially similar circumstances and conditions, and that the limitation of 10 mills on the dollar in the case of agricultural land while the levy on other real estate may be 25 mills on the dollar contravenes that provision of the Constitution that taxes shall be uniform on all property of the same class."

The original Iowa statute classifed, for general school fund tax purposes, agricultural lands located in independent school districts separate and apart from other real estate. The Iowa Supreme Court held the classification to be arbitrary and unreasonable in the case of *Keefner v. Porter*, 228 Ia. 844, 293 N. W. 501. The statute in the *Keefner* case was the same as the statute whose valdity is attacked in this case except that the present statute classifies all agricultural land, as defined by the statute, separate and apart from all other real estate for general school tax purposes.

In the usual case of claimed discrimination the situation arises by reason of the lack of uniformity in valuation.

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Here the situation arises through a statutory attempt to create a special class of property for general school tax purposes and extends a favorable rate thereto. The vice of the situation is in compelling one taxpayer to pay more than a proper proportion of the total school tax as compared with others similarly situated, while at the same time requiring him to contribute to the general tax fund from which all general school taxes of the favored taxpayer, over fifteen mills, are paid. The apparent purpose of the statute is to shift from the owners of agricultural land, as defined by the statute, at least in part, the school tax burden to the public not benefited by the statute and in addition to require the laboring man, the tenant farmer, the office worker and the balance of the public who are excluded, who always bear the burden of all tax exemption, must bear an increased tax burden to accomplish this special non-public purpose, namely, the paying of the general school tax of the favored taxpayer over fifteen mills.

The Iowa Supreme Court attempts to justify the shifting of the tax burden from agricultural lands as defined by the statute to the public and other real estate, on the theory that agricultural land does not receive the same benefits from schools as other real estate and that the statute equalizes, at least in part, by tax exemption, the tax burden for schools to the benefit received. The fallacy of the court's reasoning can readily be seen. A school tax is not laid upon property in order merely to benefit the land by allowing people who live on the property or in the area to go to schools erected and maintained by the school tax. It is laid for a public purpose. The school tax is like that for the support of government. It is for the benefit of all the people. It is a tax for a public purpose. All enjoy the beneficial results of education and the better order and government arising therefrom, irrespective of the amounts respectively contributed by each. The test of equality of

school taxes is not direct benefit of school attendance by pupils who occupy the land taxed. Were that true the childless man would be exempt from the support of schools, and the sane and well from the support of hospitals. There is no irregularity merely because the benefit resulting from the school tax are enjoyed by those who pay it, in different degrees or because some enjoy some particular benefit such as school attendance and others do not. Everyone in the state enjoys the higher social order that flows from the state's educational system. A general tax law such as a school tax law exacts contributions in return for general benefits of a government that establishes a school system. The duty to pay school taxes is found in the participation of general benefits. It cannot be laid or measured by a taxpayer's participation in some special benefit. In the case of *Kelly v. Pittsburgh*, 104 U. S. 78, 83, 26 L. Ed. 658, 660, the distinct ground on which Section 1 of Article 14 was invoked, was that the eighty acres of land of the defendant was and always has been used as farm land for agricultural use only, and cannot for that reason be subjected to taxation for ordinary city purposes. The Court at page 83 of the U. S. citation said:

> "It is urged, however, with much force, that though land of this character, land which its owner has not laid off into town lots, but which he insists on using as agricultural land, through which no streets are run or used, cannot be, even by the Legislature, subjected to the taxes of a city, the water tax, the gas tax, the street tax, and others of similar character. The reason for this is said to be that such taxes are for the benefit of those in a city who own property within the limits of such improvements and use, or might use them if they choose, while the owner of this land reaps no such benefit. Cases are cited from the higher courts of Kentucky and Iowa where this principle is asserted, and where those courts have held that farm lands in a city are not subject to the ordinary city taxes.

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It is no part of our duty to inquire into the grounds on which those courts have so decided. They are questions which arise between the citizens of those States and their own city authorities, and afford no rule for construing the Constitution of the United States. * *

We cannot say judicially that Mr. Kelly received no benefit from the city organization. These streets, if they do not penetrate his farm, lead to it. The waterworks will probably reach him some day, and may be near enough to him now to serve him on some occasion. *The schools may receive his children, and in this regard he can be in no worse condition than those living in the City who have no children, and yet who pay for the support of the schools. Every man in a county, a town, a city, a State, is deeply interested in the education of the children of the community, because his peace and quiet, his happiness and prosperity, are largely dependent upon the intelligence and moral training which it is the object of public schools to supply to the children of his neighbors and associates, if he has none himself."* (Italics Supplied.)

PROPOSITION B.

The Iowa Supreme Court erred in holding and deciding that said statute which classifies agricultural lands solely on the basis of their having been laid off or platted into tracts of ten acres or more, for general school tax, general school tax exemption and state appropriations in payment of general school taxes on such types of property, does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A statute which classifies agricultural land for general school tax purposes separate and apart from other agri-

cultural lands whose use and location is the same simply because the size of the tracts is arbitrary and unreasonable and violates Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Brinkerhoff-Farris Trust & Savings Co. v. Hill, 281 U. S. 673, 680, 50 S. Ct. 451, 454, 74 L. Ed. 1107.

Engel v. O'Malley, 219 U. S. 128, 138, 31 S. Ct. 190, 55 L. Ed. 128, 136.

Kelly v. Pittsburgh, 104 U. S. 78, 83, 26 L. Ed. 658, 659.

State ex rel Welsh v. Darling, 216 Ia. 553, 246 N. W. 390, 391.

ARGUMENT.

Appellant is a resident and the owner of a tract of land 4.13 acres in size situated in Epworth School District, Dubuque County, Iowa, and is used solely for agricultural purposes. (Record on appeal to the State Supreme Court, page 18, lines 9 to 23) Appellant's tract is devoted to the same agricultural uses as other agricultural land of ten acres or more located in said school district. (Record on appeal to the State Supreme Court, page 48, lines 23 to 29)

The general school tax for Epworth School District for the year 1946 was 30.899 mills. The appellant's said 4.13 acre tract was valued for tax purposes at $2,322.00. The general tax assessed against said tract for the tax due in the year 1946 was $71.75. Michael Hoffman resides in the same school district, owns a tract of agricultural land consisting of 87.34 acres. This property was valued for tax purposes at $2,483.00. The general school tax against the property for the tax due in the year 1946 was $76.22. (Rec-

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ord on appeal to the State Supreme Court, page 18, lines 24 to 34, and page 19, lines 1 to 16)

Under the statute appellant is required to pay $71.75 in general school taxes on 4.13 acres of agricultural land whereas Hoffman would receive a credit of 15.899 mills or $39.90 and would be required to pay the $36.92 in general school fund taxes on the same kind of property consisting of 87.34 acres.

A reading of the record will disclose that there are thousands of acres of Iowa agricultural land that do not receive any benefits under the statute simply because the land happens to be surveyed off into tracts of less than ten acres.

Thus we see that tracts of agricultural land whose location and use is the same is classified separate and apart from each other simply because of the difference in size of the tracts. *No court in this land has ever upheld a classification of this kind* where as in this case, size is not an index to the admitted evil. As said by this Court in the case of *Engel v. O'Malley*, 219 U. S. 128, 138, 31 S. Ct. 190, 55 L. Ed. 128, 136:

> "Where size is not an index to an admitted evil, the law cannot discriminate between the large and the small."

The cases cited by appellees as authority for this kind of classification are not in point. The basic question of the right to classify for general school taxation placing agricultural tracts of different sizes in different classes, was neither considered or decided and if it had been the state court decisions would not be binding upon this court. As said by this Court in the case of *Kelly v. Pittsburgh*, 104 U. S. 78, 83, 26 L. Ed. 658, 659:

> "It is urged, however, with much force, that though land of this character, land which its owner has not

laid off into town lots, but which he insists on using as agricultural land, through which no streets are run or used, cannot be, even by the Legislature, subjected to the taxes of a city, the water tax, the gas tax, the street tax, and others of similar character. The reason for this is said to be that such taxes are for the benefit of those in a city who own property within the limits of such improvements and who use, or might use them if they choose, while the owner of this land reaps no such benefit. Cases are cited from the higher courts of Kentucky and Iowa where this principle is asserted, and where those courts have held that farm lands in a city are not subject to the ordinary city taxes.

It is no part of our duty to inquire into the grounds on which those courts have so decided. They are questions which arise between the citizens of those States and their own city authorities, and afford no rule for construing the Constitution of the United States."

As said by this Court in the case of *Asbury Hospital v. Cass Co.*, 326 U. S. 207, 214, 66 S. Ct. 61, 65, 90 L. Ed. 6, 13:

> "*The ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject in respect of which the classification is made.*" (Italics supplied.)

Applying this test to the classification involved herein can there be any question but what the classification is purely arbitrary and unreasonable? Is the difference in size of two tracts which are located in the same district whose type and character is the same and used for the same purpose, pertinent to the subject in respect of which the classification is made?

We submit that the classification is arbitrary and unreasonable and is not pertinent to the subject in respect of which the classification is made; that the validity of such classification has never been passed upon by this Court; that the classification is in violation of Section 1 of the

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Fourteenth Amendment to the Constitution of the United States and involves a federal question that is substantial in character.

PROPOSITION C.

The Iowa Supreme Court erred in holding and deciding that said state statute which classifies agricultural lands on the basis of their being located in a school district in which the millage for the general school fund exceeds fifteen mills for the purpose of school tax exemption and state appropriations in payment of taxes on such types of property does not constitute an arbitrary and unreasonable classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The classification of agricultural lands in school districts where the millage rate for school purposes exceeds fifteen mills separate and apart from agricultural land located in school districts where the millage rate is fifteen mills or less and the size, character, type and uses for the same are purely arbitrary and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

ARGUMENT.

The classification is based arbitrarily on the location of the property, namely, whether the property is located within or without a school district where the millage rate for school tax purposes exceeds fifteen mills and whether the landowner receives any benefits under the statute depends entirely upon the millage rate that the district school board fixes.

To our knowledge no legislative body except the Iowa

Legislature has ever enacted a law of state-wide application carrying with it an appropriation raised by state-wide taxation where the power is delegated to the local school district to determine its own benefits under the statute, based upon the estimates of its necessary school tax. The result is a gross disparity and complete lack of uniformity of benefits, an arbitrary and discriminatory incentive for excessive and extravagant school programs to receive private and local benefits with utterly no primary public benefit to the state.

The validity of the classification involved in this proposition has not been passed upon by this Court or the highest Court of any state and is substantial in character.

PROPOSITION D.

The Iowa Supreme Court erred in holding and deciding that said state statute which benefits only citizens and taxpayers owning real estate (1) used for agricultural or horticultural purposes, and (2) laid off or platted into tracts of ten acres or more, and (3) located in a school taxing district in which the millage rate is in excess of fifteen mills, operates equally upon all citizens and taxpayers within the same class, and that said classification does not grant to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Barbier v. Connolly, 113 U. S. 27, 5 S. Ct. 357, 28 L. Ed. 923.

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 22 S. Ct. 431, 46 L. Ed. 679.

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Cotting v. K. C. Stockyard Co., 183 U. S. 79, 22 S. Ct. 30, 46 L. Ed. 92.

Hayes v. Missouri, 120 U. S. 68, 7 S. Ct. 350, 30 L. Ed. 578.

In re Opinion of Justices, 208 Mass., 616, 94 N. E. 1043.

Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.

ARGUMENT.

This is a law whose application is state-wide and has to do with state funds and not funds that are raised locally. Therefore it should be borne in mind that the class referred to consists of all owners of agricultural land as defined in the statute, situated throughout the state in school districts where the millage for the general school fund tax is fifteen mills or more and further, that each school district where the general school fund tax millage is fifteen mills or more does not constitute a separate class but is a part of the class of owners of agricultural land throughout the state in all districts where said millage is fifteen mills or more. The Iowa Court has stated in the case of *Keefner v. Porter*, 228 Ia. 844, 293 N. W. 501, 503, that property of a class may be exempted from taxation provided always that the classification is a proper one. But it is also well settled that all members of a class shall be included in the taxing act whether for the purpose of imposition of or exemption from taxation and that if the law excludes from its operation a single member of a class, which it would otherwise affect, it will be invalid. This Court has stated the rule pertaining to the Fourteenth Amendment as follows:

> "But upon this general question we have said that the guaranty of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other

persons or other classes in the same place and under like circumstances.'"

Connolly v. Union Sewer Pipe Co., 184 U. S. 540, 558, 22 S. Ct. 431, 46 L. Ed. 679, 689.

"'. . . that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances."

Barbier v. Connolly, 113 U. S. 27, 31, 5 S. Ct. 357, 359, 28 L. Ed. 923, 925.

Yick Wo v. Hopkins, 118 U. S. 356, 369, 6 S. Ct. 1064, 1070, 30 L. Ed. 220, 226.

"But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless remember that the equal protection of the laws is guaranteed, and that such equal protection is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other."

Cotting v. Godard (Kansas City Stockyard Co.), 183 U. S. 79, 112, 22 S. Ct. 30, 46 L. Ed. 79, 109.

From a reading of the statute here considered, it is readily discernible, that under these requisites of a tax exemption law the present statute is totally invalid for lack of uniformity in operation even as among members of the favored class itself.

In Iowa the general school fund tax rate of each school district is determined by the local school board. Previous to the passage of this statute, except for certain homestead exemptions, the rate so determined applied equally to all types of real estate within the district. In the enactment of the Agricultural Land Tax Credit Act the Iowa legislature has partially entered this field of local taxation by

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creating a state-wide favored class, to-wit: owners of land of the type and kind favored by the statute. Regardless of the local rate of taxation this favored group pays no more than a fifteen mill tax. There is hence presented the problem of assimilating this favored state class into the hundreds of school districts of the state whose financial structures and tax rates are as many and varied as their number. Assuming for a moment, without admitting, that the classification is valid, the question then presented is whether this dual system of tax rates, one set by the state Legislature for the favored agricultural land-owning school taxpayers, and the other set by the local district for all other school taxpayers, can possibly be said to operate in a constitutionally uniform manner, either as between favored landowners and owners of non-favored realty, or between owners of favored lands themselves.

While the argument may be advanced that the owners of agricultural lands of equal value but located in different school districts having a great disparity in millage rates, actually pay no more than a fifteen mill tax upon their respective properties, the conclusion and fact cannot be escaped that the state in paying the taxes of the favored few is actually helping certain members of the favored class to a far greater extent than it is others equally entitled to its bounty, and that under the statute the proportion to which this disparity may grow is unlimited. As in the *Keefner* Case, Supra, the basis for the disparity of treatment rests solely upon the arbitrary ground of location. The words of the Iowa Supreme Court in that case were never more pertinent, and the situation in this case is unchanged from that set of facts which led the Iowa Court to state at page 504 of the Northwestern citation and we quote:

> "None of us like to pay taxes, but when a neighbor is forced to pay an additional tax, to be used in operating

the school of his neighbor, he is being discriminated against. *Equalization of taxes cannot be brought about, by shifting the tax from the shoulders of one farmer to another, levying different amounts on the same kinds of property.*" (Italics supplied.)

In the *Keefner* case the disparity referred to was between consolidated districts and independent districts with a millage rate under fifteen mills as distinguished from independent districts with a millage rate of fifteen mills or more. In the present case the disparity is between all school districts to a greater or lesser extent dependent upon the millage rate therein.

Any attempt to coordinate local rates of school taxes with the state-wide ceiling school tax rate on favored agricultural landowners shows the mechanical impossibility of achieving any sort of substantial uniformity of taxation. Owners of favored land of identical value are benefited or not by their ceiling tax of fifteen mills by the location of their land in a high or low taxing district. In reality of operation, the agricultural landowner may pay a school tax rate equal to 100% where the local rate is fifteen mills, while another owner of land of identical value and kind pays on a tax rate equal to 25% where the local school tax rate is sixty mills. Yet the requisite of the Fourteenth Amendment is equality of taxation or exemption for all members of the class created.

With the millage rate and the amount of general school fund taxes in each school district being determined locally by each district and not by a state-wide standard, it is as impossible to obtain uniformity and equalization of the burden of taxation to be borne by agricultural real estate as it was under the statute in the *Keefner* case. It can readily be seen that the classification of the agricultural property of the taxing districts has for its basis the location

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of the property. It is not differentiated by its use or by characteristics possessed by it.

Appellant's-plaintiff's Exhibit 2 showing the 1946 General School Fund Tax for certain Iowa counties proves beyond a reasonable doubt that this unchecked disparity between school districts operates to a much greater degree than can be allowed under the most liberal interpretation of the uniformity requirement of the Constitution. The Exhibit, among other things, shows a general school fund levy of 15.075 mills in Eden No. 1 District of Marshall County and millage rates ranging to a high of 50.440 mills in Coppock District of Washington County. The levy in few, if any, of the districts is the same. Therefore the benefits derived by the owners of agricultural land in the various school districts where the millage rate varies would be different. There is no standard in the statute providing for equality or uniformity of treatment of such members of said class outlined by the Legislature. Further the great disparity of benefits resulting from the operation of the statute has no reasonable relation to any purpose that can be attributed to the statute in question.

In considering similar legislation which allowed real estate to be taxed according to the varying local rates while taxing personal property at a set state-wide rate the Massachusetts Court in declaring such legislation unconstitutional, in the case of *In re Opinion of Justices*, 208 Mass. 616, 94 N. E. 1043, 1044 states:

> "The rate upon personal property in any city or town in any year would be different from the rate of taxation upon real estate in that city or town. The taxation upon personalty would be the same throughout the state, and would be determined by the average rate upon real estate assessed for local taxation in the preceding year. This might vary from the average rate of taxation upon real estate for the current year. As the rates of local taxation upon real estate would differ

greatly in different places, the rate in any place might differ widely from the average rate. The result would be that a person having an investment of $10,000 in real estate would be obliged to bear a materially different part of the public burden from one in the same city or town having an investment of the same amount in personal property. We answer the first question in the negative."

The statute in question presents the situation of a state-wide fifteen mill ceiling of taxation upon individuals of the same class but with the rate of taxation being determined locally by each individual school district. From the standpoint of an arbitrary dual tax standard, the situation in the present case is the same as in *In Re Opinion of Justices*, 208 Mass. 616, 94 N. E. 1043, wherein the Massachusetts Court held such legislation unconstitutional. The exemption in the case at bar operates purely on local rates of taxation for purely local use. It has nothing to do with the raising of state funds for total state public use. The local rates of taxation can and do vary greatly above and below the fifteen mill ceiling as has been shown in said Exhibit 2. The benefit to various landowners within the designated class is totally dependent upon local rates and necessarily operates in a non-uniform manner throughout the state.

The only way in which a school district's taxpayers, even though they are owners of "agricultural land", can receive benefits or break even under the operation of the statute is to have the local millage rate above the average rates of all the districts in the state. Tax dollars raised from general tax sources will flow from the districts with lower school taxes to those whose districts require the greatest contribution by the state. The end result can only be a mad scramble in all districts to raise and to continue to raise the millage rates to receive the benefits of said state

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paid taxes and to benefit not by the uniformity of the operation of the statute, but to avoid loss by its intrinsic non-uniformity of operation.

It is apparent that whether the statute is primarily for the benefit of the individual agricultural landowner with a resultant disparity and non-uniformity of operation among said landowners within the benefiting class, or primarily a gift by the state to the districts eligible to receive such benefits, that both of these theories present such shortcomings as prove beyond a reasonable doubt, that the statute in question is an ill conceived and poorly formulated piece of legislation and should not be allowed to stand regardless of the so called "public purposes" attributed to it.

From a reading of the statute it is apparent that the classification involved in this proposition is arbitrary and unreasonable and does not further any public purpose and is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States. The federal question involved is substantial in character.

PROPOSITION E.

The Iowa Supreme Court erred in holding and deciding that said state statute which appropriates public moneys, raised from state-wide general sources of taxation, to the payment of general school taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute in certain school districts of the State, to the extent that the millage for the general school fund is in excess of fifteen mills, constitutes a proportioning of the tax to be borne by owners of land of the type and kind embraced by the statute, as distinguished from the tax to be borne by citizens and taxpayers owning other types of real estate, and in holding that said statute does not in this respect constitute an arbitrary, non-uniform and unreasonable

classification which grants to certain citizens and taxpayers rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Airway Electric Appliance Corp. v. Day, 266 U. S. 71, 45 S. Ct. 12, 69 L. Ed. 169.

Funke v. Lancaster Co., 110 Neb. 635, 194 N. W. 807.

Gast Realty and Investment Co. v. Schneider Granite Co., 240 U. S. 55, 36 S. Ct. 254, 60 L. Ed. 523.

Houck v. Little River Drainage Dist., 239 U. S. 254, 36 S. Ct. 58, 60 L. Ed. 266.

61 C. J. Sec. 388 page 388.

In re Opinion of Justices, 195 Mass. 607, 84 N. E. 499.

Kansas City St. R. Co. v. Road Imp. Dist. No. 6, 256 U. S. 658, 41 S. Ct. 604, 65 L. Ed. 1151.

Louisville Gas & Elec. Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770.

Martin v. District of Columbia, 205 U. S. 135, 27 S. Ct. 440, 51 L. Ed. 743.

People v. Klehm, 350 Ill. 419, 183 N. E. 454, 457.

ARGUMENT.

The Iowa Supreme Court in its majority opinion reported in 35 N. W. (2d) 66, at page 72 stated:

> "Further, a classification, as in the act here, for the purpose of proportioning the tax may be valid even though such a classification would be invalid for the purpose of applying a complete exemption."

It is submitted that this statement demonstrates the fallacy of the statute under consideration and betrays its lack of

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the quality of uniformity in operation. There is no "proportioning" of the tax within the accepted meaning of that word. "Proportion" means "the relation of one thing to another in respect to size, quantity, magnitude of corresponding parts", or "the relation of one part to another or to the whole with respect to magnitude". *Funke v. Lancaster County*, 194 N. W. 807, 110 Neb. 635. "Proportion", stated the Illinois Court in *People v. Klehm*, 183 N. E. 454, 457, 350 Ill. 419, "is defined as that which falls to one's lot when the whole is divided according to a rule or principle." A proportional tax or tax exemption should bear a direct relation to the total district school tax. Instead of this, in the present case, regardless of the heights to which the school tax may soar, the agricultural landowners' tax remains at a constant and inflexible rate of fifteen mills.

As has been pointed out by plaintiff-appellant's Exhibit 2, this statute embodies on the one hand a fixed and inflexible rate of fifteen mills of general school tax upon the favored landowner class, irrespective of the local tax rate, while all others must pay according to what the local rate in fact is. One member of the favored class may pay a "proportionate" rate of 100% in a fifteen mill taxing district, while another member may pay a "proportionate" rate of 25% in a sixty mill taxing district. Yet the Iowa Supreme Court has held in the foregoing quotation that this "proportioning" augments the constitutionality of the statute, "even though such a classification would be invalid for the purpose of applying a complete exemption."

The foregoing example clearly shows that nothing is further from the fact. A "proportioning" of the agricultural landowner's tax rate to the local tax rate is a mechanical and mathematical impossibility under the operation of this statute. A "proportioning" of the tax burden of the agricultural landowner, so that each member of the favored class itself would bear an equal share of the local tax rate

is impossible of attainment. The operation can in no way be compared to those tax classifications which by varied rates assess certain properties at varying percentages of full value, or which properties are taxed to bear a proportionate or relative share of the total tax burden. There is no standard relation between the "proportion" which one favored landowner's tax bears to his local rate and that of another favored landowner in another school district with a higher or lower rate. Neither is there a standard relation between the "proportion" of tax borne by a favored landowner to the tax borne by an owner of land not benefited by exemption.

A "complete exemption" as referred to by the Iowa Court, and the fifteen mill ceiling exemption to agricultural landowners concerned in the statute have the very element in common which the court construes in the fifteen mill ceiling as augmenting the constitutionality of the present statute. The Iowa Supreme Court has here not only assumed that agricultural lands may possibly be found by the Legislature to receive less benefit from school taxes than other real estate but it has also found by approving this statute that benefit cannot exceed a fifteen mill assessment on the valuation of agricultural property regardless of the development of educational facilities in the area.

In upholding this phase of the statute the Iowa Supreme Court cited cases and statutes regarding classification of agricultural lands separate from other types of real estate, placing particular reliance upon Minnesota statutes. But not one of these cases involves a ceiling exemption on general school fund taxes. These statutes and the cases construing them had to do with proportionate levies in the true sense. No proportion exists among taxpayers' rates of taxation when within the same district unbenefited taxpayers must pay more or less as the needs of the district

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rise and fall while the tax upon a select group of property owners remains constant.

The statement of Mr. Justice Holmes in the case of *Gast Realty and Investment Co. v. Schneider Granite Co.*, 240 U. S. 55, 36 S. Ct. 254, 60 L. Ed. 523, in condemning an assessment ordinance with a mechanically faulty base is peculiarly applicable to the type of legislation here under consideration. Mr. Justice Holmes states at page 59 of the U. S. Citation:

> "The differences were not based upon any consideration of difference in the benefits conferred, but were established mechanically in obedience to the criteria that the charter directed to be applied. The defendants' case is not an incidental result of a rule that, as a whole and on the average, may be expected to work well, but of an ordinance that is a farrago of irrational irregularities throughout. It is enough to say that the ordinance following the orders of the charter is bad upon its face as distributing a local tax in grossly unequal proportions, not because of special considerations applicable to the parcels taxed, but in blind obedience to a rule that requires the result. And it cannot be said that the ordinance as a whole may be regarded as an individual exception under a rule that promises justice in all ordinary cases."

In the *Gast* case, Supra, at page 59 of the U. S. citation, Mr. Justice Holmes states the rule of uniformity of operation within the class as follows:

> "But—if the law is of such a character that there is no reasonable presumption that substantial justice generally will be done, but the probability is that parties will be taxed disproportionately to each other, and to the benefit conferred, the law cannot stand against the complaint of one so taxed in fact." Citing *Houck v. Little River Drainage Dist.* 239 U. S. 254, 36 S. Ct. 58, 60 L. Ed. 266; and *Martin v. District of Columbia*, 205 U. S. 135, 27 S. Ct. 440, 51 L. Ed. 743.

In condemning legislation taxing foreign corporations on a basis of a number of certain shares of stock, as the sole determinant of the annual fee, this court stated in the case of *Airway Appliance Corp. v. Day*, 266 U. S. 71, 85, 45 S. Ct. 22, 69 L. Ed. 169, 177, 178:

> "Such a classification is not based on anything having relation to the purpose for which it is made. * * * The act has no tendency to produce equality; and it is of such a character that there is no reasonable presumption that substantial equality will result from its application * * * The act violates the equal protection clause of the 14th Amendment."

In the case of *Kansas City S. R. Co. v. Road Imp. Dist. No. 6*, 256 U. S. 658, 41 S. Ct. 604, 65 L. Ed. 1151, this Court in following the rule of the *Gast* Case, Supra, condemned the arbitrary assessment of railroad property in a manner different from other local realty, where the purpose of the tax was local improvement. At page 661 of the U. S. citation this Court stated:

> "Railroad property may not be burdened for local improvements upon a basis so wholly different from that used for ascertaining the contribution demanded of individual owners as necessarily to produce manifest inequality. Equal protection of the law must be extended to all."

The constitutional shortcoming of the ceiling exemption in taxation and the inherent arbitrary nature of such taxation has been the subject of able discussion:

> "Even where the right to exempt exists, the constitutional requirement of uniformity is violated if the exemption does not serve a public purpose, or if it is merely a partial exemption conditional upon the property exempted paying an arbitrary percentage which is not proportional." 61 C. J. Sec. 388, page 388.

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In the case of *In re Opinion of the Justices*, 84 N. E. 499, 195 Mass. 607, the Massachusetts Senate requested an advisory opinion upon a tax exemption act which was as follows:

> "To exempt from all other taxation, state and local, the classes of intangible personal property hereinafter enumerated and to impose thereon either as a property tax, duty, or excise, a uniform tax at the rate of 3 mills in each dollar of the cash valuation thereof: viz
>
> 1. Money on hand, on deposit, or at interest, and other debts due the taxpayer;
>
> 2. Public bonds or securities;
>
> 3. The bonds of domestic and foreign corporations;
>
> 4. The shares in the capital stock of foreign corporations now taxable under the provisions of Chapter 12 of the Revised Laws."

The Massachusetts Court in its opinion discussed the Massachusetts constitutional empowerment of the state to "impose and levy proportional and reasonable assessments, rates and taxes upon all the inhabitants of and persons resident and estates lying within the said commonwealth.

While such a "proportionate" limitation is not involved under the Iowa Constitution, the consideration of that requirement, as here bearing on the substantial federal question of uniformity, is pertinent and enlightening. At page 501 of the Northeastern citation that Court said:

> "The general purpose of the constitutional provision above quoted is to put the burdens of government equally upon all the people, in proportion to their ability to bear them. The Legislature has always had this in view. It is obviously impossible to devise any system of taxation that will be absolutely proportional in its operation upon individuals. The best that the Legislature can do is to approximate closely to the re-

sult desired, and to avoid every method which has a direct tendency to produce unreasonable or disproportional taxation."

It is earnestly submitted that a general school fund tax or general school fund tax exemption cannot be uniform in operation which does not provide that all should pay the proportional tax which the Legislature has found their classification should bear. That tax cannot be uniform which allows one select group to pay at a standard and arbitrary rate while all other groups must pay according to the rate found to be necessary in raising the general funds. The ceiling tax rate upon agricultural landowners without a limit on other property owners is more than a legislative finding that the former group receives less benefit. It is an arbitrary finding that the benefit of educational taxes to agricultural landowners cannot exceed an arbitrary figure. Even if it is conceded that agricultural landowners receive less benefit from school taxes, the benefit they receive must bear some relation to the benefits received by non-agricultural landowners. There is no such relation contemplated in the present case. There is no more relation between the fifteen mill ceiling regardless of the actual district tax than there would be if the agricultural landowner were to be completely exempted. To approve such a method of taxation is to remove the bulwark of uniform operation from the protection of the taxpaying public. If the Legislature can exempt to any degree a minority group from the payment of a general tax in tax legislation which bears no relation to the total tax to be assessed or to the benefits derived thereunder, it can exempt totally, and to degrees which cannot possibly be said to be in the public interest and in violation of all requisites of uniformity. Surely to this degree the term "uniformity" requires a tax proportional to the total cost to be borne by the district.

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The classification is arbitrary and unreasonable and not in furtherance of any public purpose.

The federal question involved in this proposition is substantial in character.

PROPOSITION F.

The Iowa Supreme Court erred in holding and deciding that said state statute, which exempts certain citizens and taxpayers from paying general school taxes upon real estate of the type and kind embraced by said statute, provides a proper basis of tax exemption on the ground that it is an encouragement and in aid of agriculture or to encourage the reorganization of school districts within the state, and therefore based upon a valid public purpose and public policy which would justify such a classification and non-uniform operation of said statute in granting to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers in contravention to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

1. **The purpose of the statute is private.**

AUTHORITIES.

Cooley on Taxation, Fourth Edition, Section 179 and 182.

Dodge v. Mission Township, 107 Fed. 827.

Hanson v. Vernon, 27 Ia. 32.

In re Opinion of the Judges (S. D. 1932) 240 N. W. 600.

Keefner v. Porter, 228 Ia. 844, 293 N. W. 501.

Laughlin v. City of Portland, 111 Maine 486, 90 Atl. 318.

Love v. City of Des Moines, 210 Ia. 90, 230 N. W. 373.

Lowell v. Boston, 111 Mass. 454.

Savings and Loan Assn. v. Topeka, 20 Wall. 655, 22 L. Ed. 455.

St. Louis & S. F. R. R. Co. v. Delk, 158 Fed. 931.

Stanley v. Jeffries, (Mont.) 284 Pac. 134.

State v. Dawson, (Wisc.) 280 N. W. 698, 709.

State v. Williams, 43 Nev. 290, 185 Pac. 459.

Thompson v. Consolidated Gas Utilities Corp., 300 U. S. 55, 79, 57 S. Ct. 364, 81 L. Ed. 510, 523.

U. S. v. Dexter, (Ia.) 154 Fed. 890.

William Deering & Co. v. Peterson, 75 Minn. 118, 77 N. W. 568.

2. **The statute does not encourage or aid agriculture.**

3. **The statute does not aid education or encourage the reorganization of schools.**

ARGUMENT.

The statute provides for the assessment and levy of general school taxes in the future, the same as in the past, and provides in effect, that the state shall pay the general school tax levied above fifteen mills on certain agricultural land located in certain school districts thereby shifting the burden of paying their general school tax from the favored landowners to the general taxpayers of the state. The statute does not in any way encourage or aid agriculture.

Agriculture is defined in Volume 3, Words and Phrases, Perm. Ed. 46, as the art of science of cultivating the ground, including the planting of seed, harvesting of crops, and the raising, feeding and management of livestock and poultry. When we speak of a law in aid or improvement of agriculture we mean a law for the betterment of this science or art of cultivation and livestock raising; a law that benefits

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the so called basic industry, as an industry. According to the record (Appellant-plaintiff's Exhibit "4"), the statute would have effect in less than one-half of the school districts in the state. How is the agricultural industry, as an industry, improved by a law that grants public funds in the form of a tax exemption in aid of some owners of agricultural land and not to others? This kind of relief from a general school tax burden is certainly not the kind of aid to agriculture that is part of the public policy of the State of Iowa. The aid to agriculture that is part of the public policy of Iowa means something that is designed to aid the productive capacity of those engaged in the industry. It does not mean mere income betterment by direct grant of public funds to owners of certain agricultural lands, in the form of a tax exemption from the payment of a general tax. A reading of the statute will disclose that it has nothing to do with aiding or encouraging agriculture. In the first place the majority of the people in Iowa engaged in the farming industry are not owners of farm real estate but are tenant farmers. A recent report compiled by the Iowa State Secretary of Agriculture shows that 51% of the persons engaged in the farming industry in Iowa are tenant farmers. In what way can they benefit from a statute that provides for the payment of certain agricultural landowners' taxes? In what way do the owners of thousands of acres of Iowa agricultural land whose land happens to be surveyed into tracts of ten acres or less, benefit from the statute? In what way is the farming industry aided or encouraged by a statute which provides that those agricultural landowners living in a school district which spends the most shall receive the most benefits?

Any incidental benefit accruing to the general public by reason of income betterment of certain agricultural landowners is entirely offset by the increased tax burden the public must pay in order to give certain agricultural

landowners the tax exemption that results in their increased income.

The cases cited by appellees in their brief and argument upholding statutes designed to aid the agricultural industry are not in point. The statutes that are involved in the cases cited are designed to aid or better the science or industry of agriculture and do not provide for a tax exemption from a general school tax for a certain favored group of owners of agricultural land, such as the statute involved in the case at bar.

A simple reading of the statute shows that the statute does not in any way aid education or the reorganization of school districts. The school districts receive no increase in funds by reason of the appropriation involved in the statute. They will receive no decrease in funds if the law is held unconstitutional.

It must be borne in mind that this statute is not an emergency relief measure. It appropriates five million dollars annually. It establishes a permanent policy.

As stated by the Court in the case of *Smithberger v. Banning*, (Nebr.) 262 N. W. 492, 501, the taxing of all the people of the entire state, and expending the proceeds only in certain school districts is not a public purpose. Classification must reasonably be adopted to secure a legitimate public interest.

Indirect and incidental benefits which may result to the public do not constitute a public purpose where the direct object is private. The appropriation here made as stated in the title to the act is an appropriation to pay the "tax credits" allowed by the act and is in no sense an appropriation made for the benefit of agriculture as an industry or in aid of education or the reorganization of school districts, the purpose of the statute is clearly private and is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

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The federal question involved in this proposition is clearly substantial in character.

PROPOSITION G.

The Iowa Supreme Court erred in holding and deciding that the said state statute which appropriates public moneys raised from state-wide general sources of taxation, to the payment, by a "credit" system, of taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by said statute, to an extent arbitrarily determined to be the amount that the tax levied for the general school fund exceeds the amount of tax which would be levied on the respective tracts of land if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds and that it does not deprive certain citizens and taxpayers of property without due process of law, and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Blaine County Inv. Co. v. Gallet, (Idaho) 204 Pac. 1066, 1067.

Goodlove v. Logan, 217 Ia. 98, 251 N. W. 39.

Peabody v. Russell, 302 Ill. 111, 134 N. E. 150, 20 A. L. R. 972.

People v. Brady, 277 Ill. 124, 115 N. E. 204.

Smithberger v. Banning, 129 Nebr. 651, 262 N. W. 492, 100 A. L. R. 686.

State v. Fowler, 94 Fla. 752, 114 So. 435.

State ex rel Davis v. Eggers, (Nev.) 91 Pac. 819, 824.

Wilson v. School Dist., (Pa.) 195 A. 90, 113 A. L. R. 1401.

Winter v. Barrett, 352 Ill. 441, 186 N. E. 113, 89 A. L. R. 1398.

Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 at 225.

ARGUMENT.

The statute is unconstitutional and void for the reason that the same is in violation of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States in that the means by which the Legislature has provided for the determination of which districts shall receive the benefits of the appropriation of funds raised by taxation of the general public, and the lack of legislative control under the statute as to the amount which each district may command to its disposal, by the sole use of its estimate and judgment as to the sum of money needed for the general school fund as the criterion for the amount of land tax credit to be received by the landowners under the statute, is an unconstitutional delegation to the school board of the district of the legislative power of determining the extent and allocation of said tax money.

An attack such as is here made upon the delegation of the legislative power to appropriate state funds under the statute in question can only be met by the argument that the discretion of fixing the local tax rate of the individual district by the school board is, as to state appropriations, only the exercise of a ministerial and not a legislative power by the board.

But the duly elected representatives of a local subdivision of a state are not the duly elected representatives of the people of an entire state. And such local representatives cannot have the power to control the amount and allocation of the public moneys of an entire state. Hence, the only question before the Iowa Court as to this aspect of

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the case is to determine whether or not the fixation of the benefit and the extent thereof, to be received by a local district, by its local officers of general funds raised from the public of an entire state, is a legislative or a ministerial function.

The argument is anticipated that such a delegation of power to local authorities to determine its own eligibility for benefit from state funds is not without standards prescribed by the Legislature, and that such delegation is hence a lawful direction of ministerial duties performed under legislatively created standards and is not a relinquishment by the General Assembly of legislative power. Any merit to this contention can only be advanced to the phase of the statute defining the landowners, or lands entitled to coverage thereunder. This is admittedly fairly definite and complete and perhaps adequately directs the county officers in determining which landowners shall be entitled to exemption, and to a consequent gift in the payment of his taxes. But as this Court knows, and as the authorities decisively show, *the test of propriety of "delegation" legislation is the completeness of such statutes as to all the standards by which the activity of the delegatee body shall be governed in a given situation.* As has been previously noted, the only limit upon the amount of tax, and hence the related amount of benefit a local rural district can claim for itself and for the agricultural landowners therein is the tax limit per student imposed by another section of the Code entirely unrelated and unmentioned by the statute itself. *Thus, the phase of the statute relating to the setting of the amount of school expense for the district, and hence, the school tax which shall be levied upon its landowners is left, except as to that upper limit of tax per student, entirely to the discretion of the local taxing district.* The local millage rate is totally dependent upon local discretion. While this legislative tax discretion may not be

onerous when only local moneys and local taxpayers are concerned, *it is onerous and in contravention of the Fourteenth Amendment when that local discretion is allowed to operate upon state tax funds raised from state-wide general taxes and paid by taxpayers of the state who owe and are under no public obligation to pay the taxes of a foreign locality, unless their Legislature so directs for a valid public purpose.* It is onerous when local discretion can dictate the disposition of such state funds and can effect their allocation without a legislative decree as to such allocation and a legislative setting of the amount so to be allocated.

The general taxpayers of the State are constitutionally entitled to have their Legislature direct where such money shall be spent. The general taxpayers of the State are Constitutionally protected from an unlawful act which in its "appropriation feature" lays out a gift of $500,000, then $2,000,000 and now $5,000,000, and allows any or all, or some or none, of the school districts as the districts themselves choose, to partake at will and in any amount or proportion they desire until the public bounty is exhausted. The general taxpayers of the State are entitled to have each State appropriation to any locality in the State subject to the combined consideration and wisdom of their duly elected Legislators. *Certainly the general taxpayers of the state and the non-benefiting landowners in the locality are entitled to more than a lethargic legislative assumption that the local school board officers will make a reasonable estimate, and that they possibly may not cause the local tax to be hiked to allow the district and benefited landowners to climb upon the gravy train of uncontrolled state aid.*

Whether such local state aid to a class which is not destitute, or infirm, or without means of support, could constitutionally be accomplished by the Legislature's appropriating funds in designated amounts to certain districts after a consideration of which district it deemed in the general

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public interest to aid need not here be considered. Neither need it be contemplated whether or not a gift to all school districts in designated and equal amounts would meet the constitutional requisites of uniformity and legislative exercise of its vested power of appropriation of State funds. *The statute itself shows that no particular district or districts are considered as objects of legislative bounty and that no legislative consideration has been or can be given to which if any agricultural land-owners are paying an excessive tax, and what, if any, state aid should properly be granted to any district.* All this determination as to disposition of state funds raised by state-wide general taxation is decided by each individual school board or taxing district. Whether a great or a small amount of the total appropriation is received locally, its amount and allocation is neither the result of a legislative directive nor the result of the operation of the statute by the local board's following any requisites and standards set forth by the Legislature as to how much benefit it and its agricultural landowners may receive.

That this local discretion as to millage rate cannot be made the basis of determination of what, if any, share of a total state appropriation shall be received locally and that the Fourteenth Amendment of the Federal Constitution is amply sustained by the authorities.

The rule as to delegation of legislative power is as stated by this Court in the case of *Yick Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 at page 225 of the L. Ed citation:

> "There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold

consent, not only as to places, but as to persons. So that, if an applicant for such consent, being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint."

In the case of *State ex rel Davis v. Eggers* (Nev.) 91 Pac. 819 at page 824 the Nevada Court states as follows:

"As all appropriations must be within the legislative will, it is essential to have the amount of the appropriation, or the maximum sum from which the expenses could be paid, stated. This legislative power cannot be delegated nor left to the recipient to command from the state treasury sums to any unlimited amount for which he might file claims."

The rule as to delegation of legislative power immediately brings to mind the case of *Goodlove v. Logan*, 217 Ia. 98, 251 N. W. 39, in which the Court stated at page 40 of the Northwestern citation, that the question before it was:

"Whether or not the Legislature of the State of Iowa had a right to confer upon the highway commission the power and authority to pass and establish rules and regulations. * * *"

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At page 43 of the Northwestern citation the Court said:

"• • • If the Legislature can delegate to the highway commission the right to do these things, then, of course, the Legislature can delegate the same power to the board of control, superintendent of banking, and all other administrative departments of the state may likewise be empowered to enact rules and regulations to be given the force of statute, which said commission might in their judgment determine to be for the general protection of the public. Once this bureaucracy has fastened itself into the life of legislative power, little else need be done by the Legislature than to meet and create boards. The Legislature has no such right to delegate to the highway commission legislative power to pass rules and regulations concerning the use of the primary highways of this state by the people of this state, such Rule VII. If the Legislature in its wise judgment desires to pass such a statute, it, of course, has the right and authority to do so, for the Legislature is composed of the representatives of the people; it is chosen by the people for the purpose of making the laws of this state. The Legislature cannot transfer the power of making laws to any one else, or place the right to make laws anywhere but where the people have placed it. • • •"

In holding such delegation unconstitutional as "legislative" the Court quotes with approval from the case of *State v. Fowler*, 94 Fla. 752, 114 So. 435, 437:

"It may be stated that the paramount test as to whether or not a particular statute amounts to an invalid delegation of legislative power is the degree of completeness of the statute as it appears when it leaves the hands of the legislative body. This law must be so complete in all its terms that nothing is left to the judgment of the delegate or appointee of the Legislature, and, where a statute passed by the Legislature is not complete as legislation, but authorizes an executive board or some other named authority to decide what should and what should not be deemed infringement of the

law, it must be held unconstitutional as attempting to make an improper delegation of legislative power."

In the case of *Winter v. Barrett*, 352, Ill. 441, 186 N. E. 113, the Supreme Court of Illinois found it necessary to condemn appropriation legislation because it found that the statute attempted to give to the "emergency relief commission" the power to determine what portion if any of a fund allotted to any particular county over 500,000 in population should be allocated to relief and what portion should be allocated to "education purposes"; and in any county having a population under 500,000 the power was attempted to be given to the county board to determine what portion, if any, of the fund should be allotted to the superintendent of schools for "educational purposes" and what portion should be expended for "relief purposes." The Court at page 127 of the Northeastern citation states:

"• • • It is apparent that the Legislature has not in either of these appropriations appropriated a distinct and separate amount for each of these two purposes, but has appropriated for both or either of the two purposes in one amount. This is in violation of the constitutional requirement that bills making appropriations must specify the objects and purposes for which the appropriations are made *and appropriate to such objects and purposes their several amounts in distinct items and sections.*" (Italics Supplied)

The Court at page 128 of the Northeastern citation further stated:

"• • • These provisions of section 4 are unconstitutional and void, because no money may be drawn from the state treasury except in pursuance of an appropriation made by law, *and no appropriation may be made subject to the discretion of any person or board or commission as to the purpose or object for which it may be used.*" (Italics Supplied)

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As in the present case, the discretion of a board was intended to supply the variable omitted by the Legislature as to the amount of state funds to be received for "educational purposes." *And where that discretion was not tempered with a complete set of standards and guides for computation of that amount, the court was constitutionally bound to condemn the appropriation.*

The function of determining the amount of a tax when no standards exist controlling the computation thereof is clearly "legislative." The school board which performs this function does so as a creature of the Legislature, a quasi-corporate body, endowed with such power by the Legislature. The propriety of such determination for the purpose of fixing local taxes is not directly questioned. The objectionable feature of the statute in question is that the exercise of this discretion is made the basis or controlling state and not local funds. Beyond the appropriation to the general fund, the Legislature cannot under the statute control the disposition of that fund. It is controlled by the school board themselves. There is no standard provided by which the school boards may be guided or controlled in commanding only a certain amount, or proportional amount, or an amount equal to other school districts' benefits. The single limit of a maximum tax per student leaves the board with a tremendous range of discretion as to the control of a slice of unknown size of the total appropriation.

When confronted by a situation similar to the present case in which the Legislature had appropriated $4,000,000 for "work, relief, direct relief, old age assistance, assistance to dependent mothers and children, public health or related matters of security and welfare, and public works, especially roads by the use of work relief labor," to be expended by a legislatively created "state assistance committee" in contemplation of a Federal Relief Program, the Nebraska Supreme Court in the case of *Smithberger v. Banning*, 129

Neb. 651, 262 N. W. 492, found that this power or discretion in the committee was the delegation of a legislative power of appropriation and hence was in contravention of the Fourteenth Amendment. The Court at page 495 of the Northwestern citation stated:

> "• • • There is no provision in any of the bills mentioned that fixes any standards for the guidance of the state assistance committee or the board of educational lands and funds. The committee and board above mentioned have an arbitrary and unrestricted discretion to allocate the $4,000,000 to any of the purposes set forth in the acts under consideration, with the single exception that old age pensions are to be given a preference. Under these acts, the board and committee have the power, if they see fit to do so, to allocate the whole fund to the payment of old age pensions and unemployment insurance *without the requirement of the making of any findings of fact under standards and tests provided for in the act.* Such provisions amount to a delegation of legislative power. Under Section 1, art. 2, and Section 1, art. 3, of the Nebraska Constitution, the legislative power of the state is vested in the Legislature and cannot be lawfully delegated to any board or committee. *Such provisions deny the equal protection of the law and violate the due process provisions of the Fourteenth Amendment to the Federal Constitution.*" (Italics Supplied)

It is apparent that the Legislature in the present statute has gone beyond constitutional bounds. There is no standard to which the school district need conform to meet the requirements of the statute. The Legislature cannot control any district's inclination to abuse this privilege. Moreover, in school districts where the voting majority is made up of agricultural landowners, there is little likelihood that such abuse will be received with displeasure by the district electorate. This is the situation which the Legislature has intentionally or inadvertently created to the jeopardy of

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(1) the general taxpayers of the State, and (2) the taxpaying owners of non-benefiting agricultural and urban lands in the district in which such abuse is effected. This statute is in contravention of the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The federal question involved in this proposition is substantial in character.

PROPOSITION H.

The Iowa Supreme Court erred in holding and deciding that said state statute which appropriates public moneys raised from state-wide general sources of taxation, to the payment, by a "credit" system, of individual taxes of certain taxpayers and citizens owning real estate of the type and kind embraced by the statute, without any limit to the amount of such benefit which an individual taxpayer may receive, and which credit is arbitrarily determined to be the amount that the tax levied for the general school fund on each tract of such lands owned by him exceeds the amount of tax which would be levied thereon if the levy for the general school fund were fifteen mills, is a proper method of appropriating state funds for a valid primary public purpose and that the classification employed therein does not deprive certain citizens and taxpayers of property without due process of law and does not grant to certain taxpayers and citizens rights and privileges not equally granted to all citizens and taxpayers, in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

AUTHORITIES.

Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446.
Peabody v. Russell, 302 Ill. 111, 134 N. E. 150.
Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 S. Ct. 837, 79 L. Ed. 1570.
Smithberger v. Banning, (Nebr.) 262 N. W. 492.
Winter v. Barrett, 352, Ill. 441, 186 N. E. 113.
Yick Wo v. Hopkins, 118 U. S. 356, 6 S. Ct. 1064, 30 L. Ed. 220.

ARGUMENT.

The non-uniformity of operation of the statute and its lack of a public purpose is further increased by the fact that there is no appropriation by the Legislature to any particular needy school district, or any provision limiting the amount of financial benefit which any one district may receive. Rather, the school board of the individual district has been granted under the statute the sole power to dictate to the Legislature the amount of benefit the landowners of the district shall receive. The only curb upon the outgoing or treasury end of this legislatively created pork barrel is that the apportionment of public funds to all the school districts receiving land tax credits cannot exceed the total amount of money appropriated. And the subsequent amendatory acts of the Legislature to increase this fund show that no limit is in sight to the size to which it may grow. Beyond the knowledge of the total amount of the appropriation and the approximate amount of "agricultural lands" to be created under the statute, the Legislature neither knows where, nor is able to control the amount or the allocation of the funds to the various districts.

That such a method of appropriation of state funds by the Legislature, in effect allowing the district itself to determine how much public aid it shall receive, must needs result in a non-uniform operation is amply evident from a contrast between the means of apportioning the appropriation to school districts employed under this statute and that method provided by the Legislature in the case of *Winter v. Barrett*, 352 Ill. 441, 186 N. E. 113. Although constitutionally condemned for the reason that local legislative discretion was entailed in apportioning the amount received, by the district, the legislation there concerned provided for a system of disbursement to the *various districts of the total appropriation* which left to the bodies administering the "allocation feature" of the statute only ministerial duties. That system of disbursement was based totally upon a mathematical calculation using the last United States census figures as to district population. Such calculation was obviously mechanical and ministerial and *further, would mathematically tend toward a uniform and proportional allocation of the total appropriation throughout the state. No local discretion factor entered into the computation, and no "legislative" function was entailed.*

In discussing those cases in which no such mechanical computation according to legislatively set standards was involved, and where the provision for allocation was based solely upon an administrative officer's performing a "legislative function" the Illinois Court in condemning an appropriation act to be administratively allocated through state branches of government in the case of *Peabody v. Russell*, 302 Ill. 111, 134 N. E. 150, at page 154 of the Northeastern citation stated as follows:

> *"In our judgment, if this appropriation for the benefit of either one, two, or three departments of the state government, without specifying the definite purpose or object of the appropriation can be sustained, then such*

*appropriations for every branch of the state government, just as indefinite must be sustained, and we see no legal reason why, if $500,000 could be thus appropriated, even larger sums might not be appropriated to various state departments in the same indefinite and uncertain manner. * * *"* (Italics supplied.)

It is not questioned that the Legislature may, and perhaps should, appropriate public moneys in aid of school districts which have adequate facilities or, because of local problems have inordinately high expenses. *But surely the Legislature cannot grant to the individual school district the power to determine whether it shall and to what extent it is to receive a state appropriation.* The power to appropriate is vested solely in the Legislature, and the means of granting such aid must conform to the legal procedure provided by the constitution for such appropriations. *To allow such a delegation of power by the Legislature is to place the landowners of that school district which attempts to run its school affairs in a sane and economical manner at the complete mercy of those school districts which choose to exploit the "appropriation feature" of the statute to the fullest extent allowed by law. The tax dollars such a district provides to the general fund by general taxation will flow to high expense districts, not by legislative decree, but by the direction of the school board which has raised its estimate or has already a high rate of school expense. There is no curb for equal expenditures upon school districts which have identical problems.* The Legislature and the general public are laid wide open to such onslaughts as the exploiting school district chooses to make. *The Legislature under the statute has divested itself of the power to govern where such appropriation shall be allocated, and any protection of the public as to the wisdom of the expenditure of its funds in a uniform and proper manner has been sacri-*

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ficed and left to the individual judgment of the board of each individual school district.

To allow the district itself to determine its individual need of state funds raised from general and state-wide sources based (1) on the number of agricultural lands qualifying under the statute and (2) the expense the district may arbitrarily decide the coming year will entail, is to foment class legislation and arbitrary discrimination of the most local and vicious sort. The district and not the Legislature determines the class of burden to be borne or benefit to be received from the appropriated funds. The district and not the Legislature determines the amount of public money which shall be appropriated to its local needs. The district and not the Legislature determines that the public welfare of the state will be served by the expenditures it makes of public moneys in its own locality. *Surely it cannot be contended that the end result of such a means of determining the disposition of state funds will have as its end result just and uniform operation and a publicly beneficial purpose.*

The arbitrary nature and the resultant non-uniform operation of the statute cannot be justified or explained by either theory of the "appropriation feature" of this statute. Whether it is said that the agricultural landowner receives the direct benefit of the appropriation to the district, or whether the appropriation is called a bookkeeping trick transferring public moneys from one state "pocket" into another, the appropriation does not and cannot operate in a uniform or substantially uniform manner upon all the school districts of the state, nor does it operate upon those districts which the Legislature has decided it is in the public interest to aid. It does not operate equally upon agricultural landowners throughout the state although they are covered by the statute, *nor does it help any particular agricultural landowners* which the legislature has decided it

is in the public interest to aid, *even if such an arbitrary selection were constitutionally permissible.* Nor, if the entire public interest requires that certain districts be aided to a greater extent than other districts, is the public allowed to have its Legislature determine which districts shall receive the benefit of state aid. The local school board determines the extent of its need and the amount of the state appropriation it shall command. *It is one thing for the school board to determine what the rate of local school taxes shall be. It is another for the school board to dictate its share of a public fund to be used for local purposes, and to declare that because the millage rate required for school purposes is over fifteen mills and there are agricultural landowners in the district it is in the public interest of the state and for a state public purpose to allot to that district a part of an appropriation of funds raised by general taxation.*

To say nothing of the plight of a taxpayer who receives no benefit under the statute because she does not own agricultural land of the type and kind concerned by the statute, but resides in a district where the school board has hiked the estimate of required school expenditures to receive state appropriations in the form of "Land Tax Credits", and whose taxes skyrocket with the estimate, the result of a private benefit to the agricultural landowners therein is inevitable, and the secondary benefit, if any, to the general public of the state by increased educational facilities in that arbitrarily and non-legislatively designated district would rest on chance and happenstance. *But under this statute, the public purpose rests distinctly upon a fictitious legislative finding that the public will benefit by a gratuity to an individual or to a school district to which no public obligation runs, or that the public will generally benefit by an appropriation gratuity to a locality which selects itself as the proper beneficiary.* It would be supposed that the

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Legislature should have in mind which, if any, local districts should receive the public bounty for the purpose of ascertaining the need and existence of a public purpose and public benefit to the State in granting local aid. But the Legislature does not know, and cannot know, which, if any, or all localities will receive the benefit of public gratuity until the requisition for public funds on the basis of "Land Tax Credits" and the tax figure estimated by the school board are set. The school board and not the Legislature will have determined that it was in the public interest that money be allocated to a prescribed extent to aid in that particular district. *Uniformity under such a haphazard and foresighted method of local appropriation, and the service of a public interest and purpose is impossible.*

This aspect of non-uniformity of operation also presents the distinguishing characteristic between this statute and such legislation as the Homestead Act or veterans' home benefit or pension legislation. Under the latter type of statute the Legislature has clearly provided by definition and outline what exactly is a homestead, or what constitutes a veteran eligible to receive benefits. It has specifically limited the amount of exemption to each person claiming benefit thereunder, in the Homestead Act, both in size of the tract and in value, and in the case of Pensions the limit and manner of computation thereof based upon uniform standards.

Under the statute presently considered, the Legislature has only defined what is "Agricultural land." It has prescribed no limit to any individual landowner, nor has it placed any limitation upon his resident status. There is no limit upon the size of the tract of land upon which he may claim the exemption and gratuity, nor as to the amount of personal exemption from tax he may claim. The Homesteader and veteran must be locally present and meet other personal requisites to receive a limited personal bene-

fit of exemption. The agricultural landowner need not be a local resident, or hold any other local status to receive not only the exemption, but the actual gratuity of a land tax credit to the unlimited extent of his agricultural landholdings.

Further, the homestead exemption to agricultural or urban land is uniform throughout the State. Whether a man's homestead borders on the Missouri or the Mississippi he receives equal benefit under the law. The veteran receives no greater pension or exemption than his former comrade in arms who saw the same service though one resides in Council Bluffs while the other resides in Davenport. But under the present statute the amount of exemption and amount of gratuity rests arbitrarily upon local necessity or school board whim. *The landowner in one district may receive a one mill exemption and gratuity on a sixteen mill school tax, while his neighbor across the road may receive a thirty-five mill exemption and gratuity on a fifty mill school tax.* The comparison of non-uniformity and uniformity between the above named types of legislation speak for themselves and the unconstitutional failure of the statute under consideration to conform to constitutional requisites and discriminatory benefits based solely upon locality, need no further elaboration.

Because of the unlawful delegation by the Legislature to the local school district of the power to determine the amount of benefits it receives under the statute, if any, the statute does not operate uniformly on members of a class and is in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The federal question involved in this proposition is substantial in character.

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CONCLUSION.

It is respectfully submitted that the questions presented by the appeal in the case at bar are meritorious and of a substantial nature warranting a review by the Supreme Court of the United States of the decision of the Supreme Court of the State of Iowa, which upheld the Iowa Statute involved herein against timely challenges as to its constitutionality under the Fourteenth Amendment to the Constitution of the United States, and the appellees' motion to dismiss or affirm should be denied.

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